IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 679 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

YOGESHBHAI DALPATRAM VIRA

Appearance:

1. Criminal Appeal No. 679 of 1992

MR DP JOSHI, Ld. APP for Petitioner No. 1

MR DK MODI for Respondent No. 1-5

MR MD MODI for Respondent No. 1-5

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 14/09/2001

ORAL JUDGEMENT

1. In this appeal, which is filed under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned the acquittal of the respondents of the offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 recorded by the learned Judicial Magistrate, First Class, Jamnagar in Criminal Case No.612/1988.

2. Mr.N.V.Patel, who was Food Inspector, Jamnagar, had visited shop named Varia & Company situated at Mandvi Tower Road, Central Bank, Jamnagar which is owned by the respondent No.1. The respondent No.1 was present at the shop and was found selling "black pepper". The Food Inspector was desirous of taking sample of "black pepper" for analysis. Therefore, he had given notice in writing then and there of his intention to have the "black pepper" analysed, to the respondent No.1, in presence of a panch witness. The Food Inspector had purchased 600gms of "black pepper" and paid price of the same to the respondent No.1. After purchase of the sample, the same was divided into three equal parts and was sealed as well as labelled as required by the Provisions of Prevention of Food Adulteration Act, 1954 ("Act" for short). One of the parts was sent by the Food Inspector for analysis to the Public Analyst under intimation to the Local Health Authority, whereas the remaining two parts were sent to the Local Health Authority for the purpose of Sub-section 2 of Section 11 and Sub-sections 2(A) and 2(E) of Section 13 of the Act. The sample sent to the Public Analyst was analysed by Shri P.M.Patel, purporting to be Public Analyst. The report of the Public Analyst indicated that the sample did not conform to the standards prescribed by the Rules framed under the Act and that the sample was adulterated. Therefore, the Food Inspector obtained sanction to prosecute the respondents and filed Criminal Case No.612/1988 in the Court of learned Judicial Magistrate, First Class, Jamnagar, requesting the learned Magistrate to convict the respondents of the offences punishable under Section 7 and 16 of the Act and punish them suitably.

3. In support of the averments made in the complaint, the Food Inspector, Mr.Naranbhai Varabhai was examined by the Prosecution as PW-1 at Exb.4, whereas panch witness, Mr.Kamalbhai Navalbhai was examined as PW-2 at Exb.29. The charge was framed by the learned Magistrate at Exb.31 against the respondents of the offences punishable under Sections 7 and 16 of the Act. The charge was read and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. The respondents were permitted to cross-examine the witnesses examined by the Prosecution. After recording of evidence of witnesses was over, the learned Magistrate had explained to the respondents the circumstances appearing against them in the evidence of prosecution Witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure. The respondents in their further statements claimed that the case of prosecution against them was

false, but did not examine any witnesses in support of their defence. On appreciation of evidence adduced by the prosecution, the learned Magistrate deduced that Mr.P.M.Patel, who had analysed the sample and who had signed the report dated December 19, 1987 was not appointed as Public Analyst by the Government and had no authority to analyse the sample. The learned Magistrate noticed that Mr.P.M.Patel was not appointed as Public Analyst by notification dated May 12, 1988 and, therefore, analysis made by him of the sample sent to him was illegal as well as without jurisdiction. The learned Magistrate further noticed that it was not mentioned in the sanction to prosecute that it was necessary to prosecute the respondents in public interest and, therefore, the sanction to prosecute was bad in law, more particularly in view of the principles laid down by the Delhi High Court and Bombay High Court. The learned Magistrate further noticed that the panch witness had not supported version of the Food Inspector that the Food Inspector had taken the sample in his presence and, therefore, the learned Magistrate concluded that as the evidence of Food Inspector was not corroborated by independent evidence, the prosecution case was liable to be disbelieved. In view of the above referred to conclusions, the learned Magistrate has acquitted the respondents by the judgement and order dated February 11, 1992, giving rise to the present appeal.

4. Mr.D.P.Joshi, learned APP for the State submitted that Mr.P.M.Patel, who had analysed the sample had all authority to act as Public Analyst and, therefore, the prosecution case could not have been thrown overboard by holding that the report prepared by him was without jurisdiction and illegal. What was claimed by the learned APP for the State was that the law does not require that in all cases, the evidence of Food Inspector must be corroborated by evidence of an independent witness and as the testimony of Food Inspector is reliable as well as consistent, it should have been acted upon for the purpose of convicting the respondents of offences with which they were charged. The learned Counsel emphasised that the provisions of Section 20 do not require the Competent Authority to mention in the sanction to prosecute that the sanction is granted in public interest and as the reasons given by the learned Magistrate are contrary to the provisions of the law, the acquittal appeal should be accepted. According to the learned Counsel, the learned Magistrate has not only misappreciated the evidence on record, but also misconstrued the provisions of law and, therefore, the acquittal of the respondents should be reversed.

5. Mr.D.K.Modi, learned Counsel for the respondents submitted that on December 19, 1987, Mr.P.M.Patel was never appointed by the Government of Gujarat as Public Analyst and as he had no authority to analyse the sample sent by the Food Inspector, the learned Magistrate was justified in acquitting the respondents of offences with which they were charged. The learned Counsel emphasised that the copy of the report of the Public Analyst was not sent to the respondents as required by Section 13(2) of the Act, but merely notice was sent to the respondents, intimating them that, if it was so desired, either or all of them might make an application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local Health Authority analysed by the Central Food Laboratory, and as breach of the provisions of Section 13(2) of the Act is committed, the acquittal should be confirmed. What was claimed by the learned Counsel for the respondents was that even if two views are possible, the view taken by the learned Magistrate being reasonable as well as plausible, the acquittal appeal should not be accepted.

6. I have heard the learned Counsel for the parties at length and reappreciated the whole evidence on record. In my view, the learned Magistrate was not justified in holding that as it was not mentioned in sanction to prosecute that the sanction was given in public interest, the respondents were entitled to be acquitted. Section 20 of the Act provides that no prosecution for an offence under the Act shall be instituted, except by or with the written consent of the Central Government or the State Government or a person authorised in this behalf by general or specific order by the Central Government or the State Government. The law does not require that the Sanctioning Authority can grant sanction to prosecute only after it is satisfied that it is in the public interest to do so. The sanction must show that the Sanctioning Authority has applied his mind to the facts of the case and satisfied himself that there is, prima facie, case. The sanction produced on the record of the case shows that the Sanctioning Authority had applied his mind to the facts of the case and was satisfied that there was, prima facie, case against the respondents. Further, the record indicates that before sanction to prosecute was granted, all the necessary papers were placed before the Sanctioning Authority. In view of the principles laid down by the Supreme Court in Suresh H. Rajput Vs. Bhartiben Pravinbhai Soni and Ors, 1996 Criminal Law Journal, 1621; AIR 1996 SC, 2883 the

sanction to prosecute the respondents granted in this case could not have been treated as defective. Therefore, the finding recorded by the learned Magistrate that the respondents are entitled to be acquitted, because it is not mentioned in the sanction that it is in the public interest to prosecute the respondents, being erroneous, is hereby set aside.

7. Similarly, the ground that the panch witness has not supported the Food Inspector and, therefore, the respondents are entitled to acquittal is also an erroneous finding and liable to be set aside. In Premballab and Anr Vs. State (Delhi Administration), 1977 SCC 56, the Supreme Court has ruled as under:

> "There is no rule of law that conviction cannot be based on the sole testimony of a Food Inspector. It is only out of a sense of caution that the Courts insist that the testimony of a Food Inspector should be corroborated by some independent witness. This is a necessary caution, which has to be borne in mind because the Food Inspector may in a sense be regarded as an interested witness, but this caution is a rule of prudence and not a rule of law; if it were otherwise, it would be possible for any guilty person to escape punishment by resorting to the device of bribing panch witnesses."

Thus, the whole prosecution case could not have been thrown overboard on the ground that the panch witness has not supported the Food Inspector. The learned Magistrate should have ascertained the probative value of the testimony of Food Inspector and tried to find out whether it is reliable or not. On reappreciation of the evidence of the Food Inspector, I find that his testimony is reliable as well as consistent. There are no major contradictions in his testimony. Further, his testimony stands amply corroborated by contemporary documents. Under the circumstances, the respondents could not have been acquitted on the ground that the panch witness has not supported the Food Inspector. The said finding being erroneous and contrary to the pinciple of law laid down by the Supreme Court, is hereby set aside.

8. The contention that the respondents were not served with the report of Public Analyst and, therefore, the acquittal should be confirmed has no factual basis. It is true that Section 13(2) of the Act provides that on receipt of the report of the result of the analysis under Sub-section 1 of the Section 13 to the effect that the

article of food is adulterated, the Local Health Authority has to, after the institution of prosecution against the person from whom the sample of the article of food was taken, forward a copy of the report of the result of the analysis to such person. However, in the present case, the Food Inspector has clearly stated that he had served the notice dated March 10, 1988 signed by the Local Health Authority, Rajkot to the respondents and had obtained acknowledgment from the respondents. There is always presumption regarding regularity of the official acts performed by a local health authority. Therefore, a presumption arises that the provisions of Section 13(2) of the Act were complied with and that a copy of the report was sent to the respondents as provided in Section 13(2) of the Act. During the course of cross-examination of the Food Inspector, it was never suggested to him that the Local Health Authority, Rajkot had not sent a copy of the report of the Public Analyst to the respondents. Under the circumstances, the respondents would not be entitled to acquittal on the ground that breach of provisions of Section 13(2) of the Act is committed by the Local Health Authority. Further, the purpose of sending copy of the report of the Public Analyst to the person from whom the article of food is taken for analysis is to enable him to make an application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local Health Authority analysed by the Central Food Laboratory. Though the notice was issued to the respondents by the Local Health Authority, the respondents had not applied to the Court to get the sample of the article of food analysed by the Central Food Laboratory. Therefore, even if it is held that the respondents were not served with the copy of the report of the Public Analyst, they have failed to point out that they have suffered any prejudice. For all these reasons, the respondent could not be acquitted on the ground that there is breach of Provision of Section 13(2) of the Act by the Local Health Authority.

9. However, the main ground which has weighed with the learned Magistrate in acquitting respondent namely that Mr.P.M.Patel, who had analysed the sample was not Public Analyst at the relevant time and, therefore, his report being without jurisdiction, the respondents are entitled acquittal deserves detailed consideration. Section 8 of the Act provides that the Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Public

Analysts for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be. The qualification of Public Analyst and duties of a Public analyst are laid down in Rules 6 and 7 respectively of Prevention of Food Adulteration Rules, 1955. Shri Modi, the learned Counsel for the respondents has produced zerox copies of certain notifications for perusal of the Court. On perusal of the same, I find that in exercise of powers conferred by Section 8 of the Prevention of Food Adulteration 1954, the Government of Gujarat had appointed Mr.P.M.Patel, Senior Scientific Assistant, Food Division of the Regional Food Laboratory, Rajkot to be the Public Analyst for all the local areas of the State of Gujarat, except the local areas within the district of Baroda, vide notification dated March 6, 1984, which was published in the Gujarat Government Gazette on March 10, 1984. Thereafter, in exercise of powers conferred by Section 8 of the Prevention of Food Adulteration Act, 1954 and in supersession of all the previous notifications issued in this behalf in so far as they related to all the State Public Health Laboratories, including all Food and Drugs Laboratories in the State of Gujarat, the Government of Gujarat had appointed Shri I.M.Desai, Junior Scientific Officer in Food and Drugs Laboratory, Baroda to be the Public Analyst for all the local areas of the State of Gujarat, vide notification dated September 6, 1985, which was published in Gujarat Government Gazette dated November 7, 1985. Thereafter, in exercise of powers conferred by Section 8 of the Prevention of Food Adulteration Act, 1954 read with Section 21 of the General Clauses Act 1897, the State Government had, by notification dated May 12, 1988, rescinded the Government Notification, Health and Family Welfare Department dated September 6, 1985 and this notification dated May 12, 1988 was published in the Gujarat Government Gazette Extraordinary on May 13, 1988. Subsequently, in exercise of powers conferred by Section 8 of the Prevention of Food Adulteration Act, 1954 and in supersession of the previous notifications issued in this behalf, the Government of Gujarat had published another notification dated May 12, 1988 appointing the persons specified in Column-2 of the Schedule appended to the notification to be the Public Analysts for the areas shown against each of them in Column-3 of the said Schedule and Mr.P.M.Patel, Senior Scientific Assistant, Food and Drugs Laboratory, Bhuj was appointed as one of the Public Analysts for all the local areas in the State of Gujarat. The history of different notifications which has been traced above makes it manifest that Mr.P.M.Patel was not appointed as Public Analyst between September 6, 1985 to May 12, 1988. Therefore, he was no competent to

analyse the sample sent by the Food Inspector at all. It becomes evident that at the time when the sample was analysed, Mr.P.M.Patel was not appointed as Public Analyst and he could not have analysed the sample sent to him. Therefore, the so called report prepared by him could not have been received in evidence and in absence of report indicating that the sample sent was adulterated, the respondents cannot be convicted under the Act. Similar views in respect of Mr.P.M.Patel himself are expressed by three learned Single Judges of this Court in different matters. In Criminal Appeal No.697/1991 which was decided on February 11, 2000, by my learned brother Mr. Justice H.H.Mehta, the sample was analysed by Mr.Patel on November 2, 1987. The learned Single Judge has held that Mr.P.M.Patel was not at all a Public Analyst as per Section 8 of the Act as on the date of analysis of the sample and his report was bad in law. Again in Criminal Appeal No.1182/1992, a question arose before the learned Single Judge of this Court, whether the report submitted by Mr.P.M.Patel, who had carried out the analysis of turmeric powder was duly authorised to analyse the sample and issue report. While dismissing the acquittal appeal, the Court (Coram: M.H.Kadri, J.) has observed in judgement dated February 5, 2001 that Mr.P.M.Patel was not appointed as Public analyst by the State Government when he had analysed the sample of turmeric powder on November 17, 1987 and, therefore, on that ground alone the acquittal appeal was liable to be dismissed. Again in Criminal Appeal No.1005/1990, a question arose before the learned Single Judge of this Court regarding the validity of report dated February 13, 1986 submitted by Mr.P.M.Patel to the effect that sample analysed in that case by him was adulterated. The Court (Coram:M.S.Parikh, J.) by judgement dated March 3, 2000 has dismissed the acquittal appeal and after placing reliance on the decision of the Gujarat High Court in the case of Kishore Venilal Patel Vs. Dayaswarup Bhailalbhai Rao & Anr., 32(1) GLR, 380, has held that Mr.P.M.Patel was not Public Analyst on the date on which he had analysed the sample and, therefore, the appeal was liable to be dismissed.

10. I am in respectful agreement with the views expressed in different judgements, which have been quoted above and I am of the opinion that the learned Magistrate did not commit any error in acquitting the respondent on the ground that Mr.P.M.Patel, who had submitted his report was not appointed by the State Government at the relevant time as a public analyst and, therefore, was not competent to analyse the sample sent to him for analysis by the Food Inspector. The learned APP failed to point

out that Mr.P.M.Patel was authorised to analyse the sample of "black pepper", which was sent by the Food Inspector, Mr.N.V.Patel. Thus, I find that, in view of this defect in the prosecution case, the acquittal appeal cannot be accepted and is liable to be dismissed.

11. For the foregoing reasons, the appeal fails and is dismissed. The muddamal to be disposed of in terms of directions given by the learned Magistrate in the impugned judgement.

14-9-2001 (J.M.Panchal, J.)

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